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In re Application of	:	
BAKER, et al.	:	
Application No.: 10/526,942	:	
PCT No.: PCT/US04/40409	:	DECISION ON PETITION
Int. Filing Date: 02 December 2004	:	UNDER 37 CFR 1.47(b)
Priority Date: 12 December 2003	:	
Attorney Docket No.: 718452.9	:	
For: URINARY TRANSFER SYSTEM AND	:	
ASSOCIATED METHOD OF USE	:	

This decision is in response to applicants' "Petition under 37 C.F.R. Section 1.47(b) by Entity Having Proprietary Interest to File Application on Behalf of Inventor Who Refuses to Sign Declaration" filed 16 September 2005.

BACKGROUND

On 02 December 2004, applicants filed international application PCT/US04/40409, which claimed a priority date of 12 December 2003. The international application listed Warren Spielman as an applicant/inventor and Larry R. Baker as a deceased inventor. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 07 July 2005. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States is to expire 30 months from the priority date, 12 June 2006.

On 08 March 2005, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and a preliminary amendment.

On 16 September 2005, applicants filed the present "Petition under 37 C.F.R. Section 1.47(b) by Entity Having Proprietary Interest to File Application on Behalf of Inventor Who Refuses to Sign Declaration."

On 25 October 2005, applicants filed "Letter for Express Request to Begin National Phase Proceedings."

DISCUSSION

Section 409.03(c) of the Manual of Patent Examining Procedure (MPEP) states, in part:

"37 CFR 1.47 should not be considered an alternative to 37 CFR 1.42 or 35 U.S.C. 117 since the language "cannot be found or reached after diligent effort" has no reasonable application to a deceased inventor. In re Application Papers Filed September 10, 1954, 108 USPQ 340 (Comm'r Pat. 1955). See 37 CFR 1.42 and MPEP § 409.01. However, 37 CFR 1.47 does apply where a known legal representative of a deceased inventor cannot be found or reached after diligent effort, or refuses to make application. In such cases, the last known address of the legal representative must be given (see MPEP § 409.03(e))."

Additionally, a petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(i); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The 37 CFR 1.47(b) applicant has satisfied the requirements of items (1); (2); (3); (5) and (6). However, items and (4) has not been satisfied.

Regarding item (4) above, an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor has not been submitted with the present petition. Additionally, the international application listed Larry R. Baker as a deceased inventor. In this case, a declaration executed by the legal representative (executor, administrator, etc.) on behalf of the deceased inventor (or by "all of his heirs" of the deceased inventor, where no legal representative has been appointed) is required. If the legal representative of the deceased inventor is unavailable or refuses to execute the application, a petition under 37 CFR 1.47 for the nonsigning legal representative is needed. (See 37 CFR 1.42 and 1.497(a)-(b))

For the reasons stated above, it would not be appropriate to accept the application without the signature of Warren Spielman under 37 CFR 1.47(a) at this time.

CONCLUSION

The petition under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to:
Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box
1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the
attention of the Office of PCT Legal Administration.



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